



**DEPARTMENT OF PERSONNEL**  
**ADMINISTRATIVE REGULATION NO. 133**

**FAMILY and MEDICAL LEAVE**

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**I.     PURPOSE/SCOPE**

The purpose of this administrative regulation is to define employee eligibility for Family/Medical Leave (FML) and the procedures for requesting and granting such leave. Family/Medical Leave (FML), without pay, is available to any employee who has been employed by the City of St. Louis for a minimum of twelve months (can be non-consecutive within the seven (7) years prior to the employee's most recent hire and within a longer period if the break is occasioned by the fulfillment of a military or other service obligation protected by the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., and who has worked at least 1,250 hours within the twelve-month period immediately preceding the beginning of the requested FML. Any time spent fulfilling a National Guard or Reserve military obligation or serving in the regular

armed forces during the year preceding the requested FML will be counted toward the 1,250 hours worked.

Those eligible may include some part-time and per-performance employees. Rights granted under the Family and Medical Leave Act cannot be waived by the employee or the City of St. Louis.

Employees are required to use sick leave or medical leave to run concurrently with the FML, if the reason for leave qualifies under the provisions of administrative regulations on Sick Leave or Medical Leave. In those instances when paid sick leave or medical leave is not appropriate or is unavailable, employees are required to use accrued vacation time except that employees can keep one (1) week of vacation hours (if they have accrued one (1) week of vacation and are eligible to take it). Employees will be allowed to use all of their compensatory time, if requested by the employee. All forms of paid leave used during FML will be credited against the FML entitlement.

## **II. DEFINITIONS**

1. **Conditional Approval of FML:** Approval within five (5) working days of a request for FML submitted by an eligible employee on the condition that specified documentation (completed Certification of Physician or Practitioner, birth certificate, etc.) is provided by a certain date.
2. **Covered Active Duty:** (A) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (B) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of Title 10 of the United States Code.
3. **Covered Servicemember:** (A) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (B) a covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
4. **Covered Veteran:** An individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
5. **Eligible Employee:** An employee who has been employed by the City of St. Louis for at least twelve months on the date the FMLA leave is to commence; **and** has worked at least 1,250 hours in the twelve (12) months immediately preceding the date leave is to begin.

In determining whether the individual has been employed for at least twelve (12) months for purposes of paragraph (1) above, periods of employment more than seven (7) years prior to the employee's most recent hire by the employer need not be counted, except that such prior periods of

employment must be counted if the break in service was occasioned by the fulfillment of the employee's service obligation protected by the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. §§4301 et seq., such as a period of service in any branch of the U.S. military, including the National Guard or the Reserves, or service as an intermittent disaster-response appointee for the National Disaster Medical System or as a person training for service as such an appointee.

In determining whether the individual has worked 1,250 hours within the prior twelve (12) months for purposes of paragraph (2) above, time spent during those twelve (12) months fulfilling an USERRA covered service obligation will be counted toward the 1,250 hours worked.

Some part-time and per-performance employees may be eligible if they meet the above criteria.

6. **FML Week:** A week of paid or unpaid FML is the same as the employee's normal work week. For example, if an employee normally works five 8-hour days per week, then five 8-hour days of non-paid leave constitutes one week of FML; if a half-time employee works five 4-hour days per week, one week of leave equals five 4-hour days.

7. **Health Care Provider:** A doctor of medicine or osteopathy authorized to practice medicine or surgery by the state in which he or she practices; a podiatrist; a dentist; a clinical psychologist; an optometrist; and a chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray) authorized to practice in the state and performing within the state-defined scope of practice; a nurse practitioner, and nurse-midwife, a clinical social worker and a physician's assistant authorized to practice under state law and performing within the state-defined scope of practice; and a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts; a health care provider that is accepted by the employer's group health care plan benefits manager; and a health care provider who practices in another country and is authorized to practice in accordance with the law of said country and who performs within the scope of his or her practice as defined under such law.

8. **Immediate Family Members:**

- A. **Son or Daughter:** A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability, as defined by the Americans with Disabilities Act.
- B. **Son or Daughter of a Covered Servicemember:** A biological, adopted or foster child, stepchild, legal ward or a child for whom the servicemember stood in loco parentis, and who is of any age.
- C. **Son or Daughter on Covered Active Duty of Call to Covered Active Duty:** A biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

- D. **Parent:** A biological, adoptive, step or foster father or mother, or an individual who stood in loco parentis to the employee, when the employee was a son or daughter as defined in paragraph A above. This does not include parents-in-law.
  - E. **Spouse:** A husband or wife with whom an individual entered into marriage as defined or recognized by state or federal law including same-sex marriages or a domestic partner as defined by ordinance and registered under the domestic partnership registry.
  - F. **Next of Kin:** The nearest blood relative other than the covered servicemember's spouse, parent, son or daughter, including blood relative given legal custody of the servicemember including brothers and sisters, grandparents, aunts and uncles, first cousins, or another blood relative specifically designated by the servicemember as next of kin. When a veteran designates in writing a blood relative as the next of kin for FMLA purposes, that individual is deemed to be the veteran's only FMLA next of kin.
9. **Incapable of Self-care:** Individual (qualifying relative) requires active assistance or supervision to provide daily self care in three or more of the activities of daily living such as grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, etc.
10. **Intermittent or Reduced Schedule Leave:** Intermittent leave taken is leave taken in several blocks of time for a single illness or injury. This may include leave of an hour or more to several days at a time. Reduced leave schedule means leave that reduces the usual number of working hours per work day or work week.
11. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves:
- A. Any period of incapacity or treatment in connection with or subsequent to inpatient care (an overnight stay) in a hospital, hospice, or residential medical care facility.
  - B. Any period of incapacity making the employee unable to perform the essential functions of the job, thereby requiring absence from work or other regular daily activities of more than three consecutive calendar days due to the serious health condition, that also involves: (1) In person treatment two or more times within a thirty (30) day period (the first treatment must occur within seven (7) days of the initial date of incapacity) and the second must occur within thirty (30) days of the initial date of incapacity as determined by the health care provider, OR (2) In person treatment by a health care provider on at least one occasion (the treatment must occur within seven (7) days of the initial date of incapacity) that results in a regimen of continuing treatment.
  - C. Any period of incapacity due to pregnancy and prenatal care.

- D. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which requires periodic visits for treatment (at least twice a year) by or under the supervision of a health care provider, which continues over an extended period of time and which may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy).
  - E. Restorative dental treatment following an injury or removal of a cancerous growth. This may involve removal of natural teeth to ameliorate dental disease, if such removal requires ongoing treatment and the employee is deemed unable to perform his/her job duties for three or more days per the written certification of a practitioner.
  - F. Substance abuse treatment by a health care provider.
  - G. Diagnostic tests and examinations to determine whether a serious health condition exists and evaluations of the condition.
12. **Twelve (12)-Month Period:** The "twelve-month period" during which employees are eligible for twelve (12) weeks of leave will be a period measured forward, beginning on the first date FML is taken. The next twelve-month period begins the first time FML is taken after the end of the previous twelve-month period.

### **III. FAMILY/MEDICAL LEAVE UNRELATED TO MILITARY SERVICE**

City employees are entitled to a maximum of twelve weeks of unpaid FML for the reasons listed below provided they meet the requirements of this administrative regulation and the federal "Family and Medical Leave Act of 1993" (FMLA) as amended.

- 1. For the birth of a son or daughter and to care for the newborn child.
- 2. For placement with the employee of a child for adoption or foster care.
- 3. To care for the employee's spouse, parent or son or daughter as defined herein with a serious health condition.
- 4. Because of a serious health condition that makes the employee unable to perform the essential functions of his/her job.

#### **Special Provisions: Birth, Adoption or Placement of a Child**

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the twelve-month period beginning on the date the birth or placement occurred. Any FML under this provision must be used within this one (1) year period. This leave may not be taken on an intermittent or reduced schedule basis. Although the time is ordinarily approved for one continuous block, a request for splitting the time into several blocks may be approved at the discretion of the appointing authority. If spouses both work for the City, each can request twelve (12) weeks of FML

under this provision.

Circumstances may require that FML begin before the actual placement of a child for adoption or foster care. This time may include absences from work required for the placement for adoption or foster care (i.e., the employee may be required to attend counseling sessions, appear in court, consult with attorneys or the doctor representing the birth parent, or travel to another country to complete an adoption and take custody of a child). The law does not require that the source of an adopted child be a licensed placement agency, but the adoption must be formal and legal in all other respects. A formal agreement between the state and the foster family is required for eligibility for leave for the placement of a foster child. In addition, there is no maximum age limit on a child being adopted or placed for foster care for purposes of determining eligibility for leave.

Circumstances may also require that FML begin before the birth of a child. An expectant mother may take such leave before the birth of the child for prenatal care or if for incapacity due to pregnancy.

FML taken for adoption or foster care placement of a child does not qualify for paid sick leave or medical leave; however, an employee must use any available vacation time to run concurrently with FML taken under these circumstances, except that the employee may retain one (1) week of vacation hours if he or she has accrued one (1) week of vacation and is eligible to use it. Upon request, the employee may use any available compensatory time to run concurrently with the FML taken.

### **Intermittent or Reduced Schedule FML**

FML may be taken intermittently or on a reduced leave schedule under the following circumstances, and when certified by a health care provider:

1. To care for an immediate family member with a serious health condition.
2. For an employee's own serious health condition.

Some examples of permissible use of intermittent leave or a reduced leave schedule include, but are not limited to, a series of medical appointments related to the employee's or immediate family member's qualifying serious health condition, or leave taken several days at a time over a period of weeks or months for chemotherapy, radiation therapy or physical therapy, etc.

An employee who has been approved for intermittent or reduced schedule FML cannot be required to produce a medical statement each time leave is taken. Should the employee's use of intermittent or reduced schedule FML substantially deviate from the original request (i.e., the employee is absent from work for a longer period of time or more frequently than the expected interval per FML incident), the appointing authority may request an updated physician/ practitioner certification form, but no more often than at thirty-day intervals.

Employees are obligated to follow call-in procedures (and can be subject to disciplinary action for failure to do so), except under extraordinary circumstances, and must make reasonable efforts to

schedule medical treatment so as not to unduly disrupt the workplace. This includes giving advanced notice to the employee's supervisor of scheduled medical appointments.

An appointing authority may temporarily reassign an employee to an alternative position, with equal benefits and pay, if qualified, for the duration of an intermittent or reduced schedule FML period. After the leave, the employee must be returned to the same or equivalent position. The appointing authority must coordinate any decision to reassign an employee on intermittent/reduced schedule FML with the Employee Relations Section of the Department of Personnel prior to notifying the employee or implementing a temporary reassignment.

#### **IV. FAMILY/MEDICAL LEAVE for CAREGIVERS of SERVICEMEMBERS**

1. An eligible employee who is the spouse, parent, son or daughter or next of kin of a covered servicemember with a serious injury or illness may take up to twenty-six (26) weeks of unpaid, job-protected leave to provide care for a covered servicemember who is undergoing medical treatment, recuperation or therapy in a medical facility, or who is on out-patient status, or is on the temporary disabled retired list (TDRL) due to a serious injury or illness that occurred while on active duty or was aggravated by service in the line of active duty. This leave is available for the care of a veteran only for care relating to a serious injury or illness that was incurred by the covered veteran in the line of duty on active duty or existed before the veteran's active duty and was aggravated by service in the line of active duty
2. This leave can be taken only once during a single twelve (12)-month period. The twelve (12)-month period begins on the first day the eligible employee takes FML leave to care for a covered servicemember. That requirement is per servicemember and per injury or illness. Spouses working for the City are limited to a combined total of twenty-six (26) weeks of leave. The leave may be taken continuously or intermittently or on a reduced leave schedule basis. Employees are limited to a combined total of twenty-six (26) weeks of FML for all qualifying reasons during that year, with the twelve (12)-week limit applying to other FML reasons for leave. A Certification of Physician/Practitioner must be submitted that provides the same information required for other FML leave circumstances.
3. Leave for this purpose can be granted within five (5) years of the end of the servicemember's active duty. For servicemembers discharged or released from service before March 8, 2013, the time between October 28, 2009 and March 8, 2013 does not count toward the five (5) years. If the leave commenced within the five-year period, it can extend for up to twelve (12) months even if some of that time is beyond the end of five-year period subject to the overall limitation of twenty-six (26) weeks within that twelve-month period.
4. Paid leave (sick leave, medical leave, vacation, compensatory time) will run concurrently with the Family/Medical Leave.

#### **V. FAMILY/MEDICAL EXIGENCY LEAVE for RELATIVES OF SERVICEMEMBERS**

Exigency Leave is authorized for a qualifying exigency when an employee's spouse, son,

daughter or parent is on covered active duty (deployment to a foreign country) or is called to covered active duty status, as defined by federal regulation. Exigency leave entitlement is limited to twelve (12) weeks within a twelve (12)-month period. Qualifying exigency leave may be taken on an Intermittent or Reduced Schedule basis. Exigency leave covers family members of servicemembers in the regular armed forces, National Guard and Reserves.

Qualifying exigencies include:

1. Short-notice deployment leave of seven (7) calendar days, beginning on the day the servicemember is notified of an impending call or order to active duty, may be taken to address any issue that arises because a covered servicemember is notified of a call or order to active duty seven (7) or fewer days prior to the date of deployment.
2. Military events and related activities: to attend any official military ceremony, program or event related to the call to active duty or call to active duty status related to the servicemember and to attend support or assistance programs and informational briefings sponsored by the military, one of its service organizations or the American Red Cross that are related to the covered active duty or call to covered active duty status of the servicemember.
3. Childcare and school activities: to arrange for alternative childcare for a biological, adopted or foster child, a stepchild or a legal ward of a covered servicemember or a child for whom a covered servicemember stands in loco parentis who is either under age 18, or age 18 or older and incapable of self-care; to provide childcare on an urgent, immediate-need basis; to enroll in or transfer a child to a new school or day care facility; or to attend meetings with school or daycare facility staff when due to circumstances arising from the covered active military duty status or call to covered active duty status.
4. Financial and legal arrangements: to make or update financial or legal arrangements to address the service member's absence, such as executing powers of attorney, etc., or to act as the servicemember's representative before a federal, state or local agency to obtain, arrange or appeal military service benefits while a servicemember is on active duty and for a period of ninety (90) days following the termination of active duty status.
5. Counseling: to attend counseling for the employee (provided by someone other than a health care provider) for the covered servicemember or his or her son or daughter, if the counseling arises from the active duty or call to active duty status of a covered servicemember.
6. Rest and recuperation: to spend time with a covered servicemember who is on short-term, temporary rest and recuperation leave during a period of deployment. Leave taken for this purpose can be used for a period of fifteen (15) calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave.



7. Post-deployment activities:

- (i) To attend arrival ceremonies, reintegration briefings and other official ceremonies or programs sponsored by the military, for ninety (90) days following the termination of active duty;
- (ii) To address issues that arise from the death of a servicemember while on active duty, such as meeting and recovering the body and making funeral arrangements and attending funeral services.

8. Additional activities: to address other events that arise out of the active duty or call to active duty that both employer and employee agree qualify as an exigency and agree to the timing and duration of the leave.

The first time an employee requests leave for a qualifying exigency, commenced or will commence, arising out of active duty or a call or order to active duty of a covered servicemember, the employer may require the employee to provide a copy of the servicemember's active duty orders or other documentation issued by the military. This documentation must only be provided once per call to duty. The employee may be requested to sign a certification describing the facts regarding the qualifying exigency, sufficient enough to support the need for leave, including the type of exigency and any available written documentation supporting the request for leave.

Other information the employer may require includes the date the qualifying exigency commenced or will commence and if the leave is for a continuous period of time, the beginning and end dates for such absence. If the leave is on an intermittent or reduced leave basis, there should be an estimate of the frequency and duration of the exigency.

Employees taking FML under these circumstances must take all of their accrued time (sick leave as applicable, medical leave as applicable, vacation leave) prior to being placed on leave without pay status, except that employees can keep one (1) week of vacation hours (if they have accrued one (1) week of vacation and are eligible to take it). Employees will be allowed to use all of their compensatory time, if requested by the employee. Approved leave will run concurrently with the FML and will count toward the employee's FML entitlement. (See Section XI. Payroll Procedures—Processing Family and Medical Leave)

## **VI. EMPLOYEE APPLICATION FOR FAMILY/MEDICAL LEAVE:**

An employee must give at least thirty (30) days advance notice to the employer of the need to take FML when it is foreseeable for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember or for the placement of a child for adoption or foster care. In such cases, an employee will submit the following to the appointing authority:

- 1. A completed Request for Family/Medical Leave of Absence form or a completed Request for Military Family/Medical Leave of Absence for Care of a Servicemember form or a completed Request for Military Family/Medical Leave of Absence for

Active Duty Exigencies; or

2. A completed Request for Family/Medical Leave of Absence on an Intermittent/Reduced Schedule Leave Basis form or a completed Request for Intermittent/Reduced Schedule Military Family/Medical Leave of Absence for Care of a Servicemember form or a completed Request for Intermittent/Reduced Schedule Military Family/Medical Leave of Absence for Active Duty Exigencies form,

**AND**

3. A completed Certification of Health Care Provider for Employee's Serious Health Condition form or a completed Certification of Health Care Provider for Family Member's Serious Health Condition form or a completed Physician or Practitioner form or documentation related to the adoption or foster care placement or a completed Certification for Serious Injury or Illness of Covered Servicemember form or a completed Certification of Qualifying Exigency for Military Family Leave form and the required documentation as specified therein.

[**Note:** In cases involving elective procedures and intermittent or reduced schedule leave, an employee is expected to consult with the appointing authority prior to scheduling medical treatment, so that treatment can be arranged at times that will not disrupt unduly the operations of the department/division. Scheduling of treatment is, however, always subject to the approval of the health care provider. The duration of approval for Intermittent or Reduced Schedule FML cannot exceed twelve (12) months per request. Should the need for this type of FML continue beyond twelve (12) months, the employee must submit another request and a new Certification form; and, if the needs change substantially during the approved twelve (12) month period (from what was originally authorized by the practitioner), a new certification can be required.]

When unforeseen medical circumstances prevent giving advanced notice of the need for FML, notice must be given as soon as practicable under the facts and circumstances of the particular case and generally within the time prescribed by the appointing authority's usual and customary notice requirements applicable to such leave. If the employee is unable to do so, notice may be given by a family member.

## **VII. APPOINTING AUTHORITY RESPONSE AND EMPLOYEE NOTIFICATION**

It is the appointing authority's responsibility to offer the leave as Family/Medical Leave, whether or not the employee requests it, based on knowledge or information suggesting that a serious health condition or other qualifying event has occurred. It is recommended that a declaration of conditional FML should be made on the fourth day of absence for personal illness or for that of a qualifying relative. FML will begin on the first day of the period of absence. The appointing authority can declare an employee's absence as FML, even without compliance by the employee in submitting required documentation, but such a determination must be communicated to the employee in writing. The Department of Personnel has the responsibility for making a final determination that a leave of absence will be covered under FML and, therefore, credited toward the City's obligation to provide FML. The appointing authority must send the following documents to

the employee within five (5) business days of receiving information of the possible need for FML:

1. Special Notice to Employees Requesting Family and Medical Leave/Your Rights Under the Family and Medical Leave Act of 1993.
2. A completed Notice of Eligibility and Rights and Responsibilities (Family and Medical Leave Act).
3. One of the following forms as appropriate: Request for Family/Medical Leave of Absence or Request for Family/Medical Leave Absence on an Intermittent/Reduced Schedule Leave Basis, or Request for Military Family/Medical Leave of Absence for Care of a Servicemember or Request for Intermittent/Reduced Schedule Military Family/Medical Leave for Care of a Servicemember, or Request for Military Family/Medical Leave of Absence for Active Duty Exigencies or Request for Intermittent/Reduced Schedule Military Family/Medical Leave of Absence for Active Duty Exigencies.
4. Certification of Physician or Practitioner form and Fitness for Duty form: At the time FML is approved a copy of the essential functions of the position occupied by the employee must be given to the employee as well as notification that a Fitness for Duty form must be completed by the Physician or Practitioner for the employee to return to work.
5. A request for verification of adoption or foster placement or Active Duty status or Call to Active Duty status and qualifying exigency.

The appointing authority must notify the employee of his or her eligibility to take FML **within five (5) business days** of receiving a request or acquiring knowledge that an employee may qualify by sending the completed *Notice of Eligibility and Rights and Responsibilities (Family and Medical Leave Act)*.

The appointing authority must approve (designate) or disapprove FML by completing the reverse side of the request form submitted by the employee, dating it and giving a copy to the employee **within five (5) business days**. **If not all required documentation has been submitted, conditional written approval of FML should be granted within five (5) business days, contingent upon submission of the required documentation and review by the Department of Personnel.** Employees, in accordance with the Act, must be given a reasonable time period to comply, i.e., at least fifteen (15) calendar days, unless the circumstances of the leave request dictate the need for additional time. FML documentation can be faxed. An appointing authority may not require more medical information than that requested on the Certification form except under the following circumstances:

1. If the information on the certification is illegible, missing or incomplete, the appointing authority should give the employee a reasonable opportunity, at least seven (7) days, to remedy the deficiency. This request must be given to employee in writing and state what additional information is required.

2. If an appointing authority has reason to doubt the validity of a medical certification, he or she may require the employee to obtain a second opinion (and in some cases a third opinion) at the employer's expense. However, there are very specific restrictions in the Act regarding requirements for second or third opinions and, furthermore, there are serious penalties for unlawful denials of leave requests. Therefore, an appointing authority must coordinate any "second/third opinion" requests or planned denial of leave requests with the Employee Relations Section of the Department of Personnel, 622-3563, prior to advising the employee of such determinations.
3. Under most circumstances medical re-certification (updated medical certification) can be required no more frequently than every thirty (30) days. If an appointing authority would like to request re-certification, he or she should contact the Department of Personnel. Following a review of the request for FML, the appointing authority or designee should fill out the "appointing authority response," and include the amount of leave to be counted against the employee's FML entitlement, if it is known at the time of designation (e. g. hours, days, weeks). The employee should also be advised whether accrued paid leave time is available to run concurrently with the FML leave. The appointing authority should forward a copy of the completed application/response form to the employee.

Under the City's Family and Medical Leave Program, employees must take all of their accrued time (sick leave, medical leave, vacation) prior to being placed on leave without pay status for approved Family and Medical leave, except employees can keep one (1) week of vacation hours (if they have accrued one (1) week of vacation and are eligible to take it). Employees will be allowed to use all of their compensatory time, if requested by the employee. Approved leave will run concurrently with the FML and will count toward the employee's FML entitlement. (See Section XI. Payroll Procedures--Processing Family and Medical Leave.)

## **VIII. BENEFITS**

The City will continue to pay for the employee's health care and basic life insurance coverage while an employee is on an approved non-paid "Family and Medical Leave of Absence." However, the employee will be responsible for arranging payment for any optional plans, including dependent medical coverage, by making arrangements with the Employee Benefits Section of the Department of Personnel. If the employee allows optional plans to lapse, coverage can be resumed when the employee returns to duty.

An employee on unpaid FML who does not pay his or her portion of individual health care coverage premiums during the leave period will be assessed the unpaid balance by payroll deduction during the first two (2) bi-weekly payroll periods after returning to work. Dependent premiums may also be paid during the length of the FML, or the balance will be deducted during the first two (2) bi-weekly pay periods after returning to work.

During non-paid Family/Medical Leave, the employee does not continue to accrue additional

vacation or medical leave. However, the time spent on leave counts as continuous service for purposes of computing years of service and vacation accrual rates. With respect to pension benefits, any period of non-paid Family/Medical Leave will be treated as continued service, i.e., no break in service for purposes of vesting and eligibility. However, the non-paid leave will not be counted toward creditable service.

#### **IX. APPROVAL OR DENIAL OF A FAMILY/MEDICAL LEAVE REQUEST**

A FML request cannot be denied except as follows:

1. The employee does not meet the eligibility requirements.
2. The request is not for a qualifying reason or the relationship is not covered.
3. The employee does not provide, in a timely manner, a requested medical certification or other required documentation.
4. The appointing authority discovers that the documentation is fraudulent.
5. The employee tests positive for drugs, refuses to test, or tests positive for alcohol on a second occasion.
6. The employee has already used the FML to which he or she is entitled during the applicable twelve (12)-month or twenty-six (26)-month period.
7. The employee has given unequivocal notice that he or she does not intend to return to work.

#### **X. RETROACTIVE DESIGNATION OF FAMILY/MEDICAL LEAVE**

The retroactive designation of leave as Family/Medical Leave can be made only under the circumstances listed below. Retroactive designations should be made in coordination with the Employee Relations Section of the Department of Personnel.

1. If the appointing authority learns after a leave has begun that it is for an FML purpose, the leave can be designated as FML retroactively.
2. If the appointing authority learns that a leave was for a FML purpose after the employee has returned to work, it can be designated retroactively if it is done within two (2) business days of the employee's return. In addition, when an employee wants retroactive FML protections, he or she must request it within two (2) days of returning from leave for an FML purpose.
3. An employer may retroactively designate leave, with appropriate notice, if the failure to timely designate it does not cause harm to the employee.

## **XI. PAYROLL PROCEDURES – PROCESSING FAMILY/MEDICAL LEAVE**

The following step-by-step process is designed to provide a timely response to requests for a Family/Medical Leave of Absence (FML):

1. The Employee submits a Request for Family/Medical Leave of Absence form or a Request for Family/Medical Leave Absence on an Intermittent/Reduced Schedule Leave Basis, or a Request for Military Family/Medical Leave of Absence for Care of a Servicemember or a Request for Intermittent/Reduced Schedule Military Family/Medical Leave for Care of a Servicemember, or a Request for Military Family/Medical Leave of Absence for Active Duty Exigencies or a Request for Intermittent/Reduced Schedule Military Family/Medical Leave of Absence for Active Duty Exigencies to the Appointing Authority or his/her designee. (Note: These forms should be mailed to the employee on the fourth day of continuous illness; see Section VII.)
2. The appointing authority must respond to any request within five (5) business days of receiving the application and verifying that the employee meets eligibility, based on hours worked within the preceding twelve (12) months and documentation of a qualifying event. After completing and signing the Eligibility Notice and the appointing authority Response to Family/Medical Leave Request on the reverse side of the form, a copy should be given to the Employee. The Employee must provide any additional supporting documentation, if required by the appointing authority, within fifteen (15) days of receiving the request. The Employee should be told to contact the Employee Benefits Section of the Department of Personnel to make arrangements to pay for any optional insurance coverage he or she wishes to continue while on non-paid FML.
3. The appointing authority or his/her designee should verify whether paid leave will be applied to the FML. If the leave is non-paid, an Employee Status Form must be completed indicating that the reason for leave is FML. The original Employee Request for Family/Medical Leave of Absence form, original Certification form, any other supporting documentation should be forwarded to the Employee Relations Section of the Department of Personnel at 1114 Market Street, Room 700. The Employee Status Form should be sent to the Personnel Services Section of the Department of Personnel at 1114 Market Street, Room 700.
4. The Employee Relations Section will review all FML documents for final approval. If there is insufficient information to determine whether the request is a qualifying event, a request for additional information will be sent to the appointing authority. If approval is denied, an explanation of the denial will be sent to the appointing authority. The appointing authority must then forward a letter to the employee explaining why FML is being denied.
5. If approved leave is granted on an "Intermittent or Reduced Schedule" basis, the

employee must submit a Report of Intermittent/Reduced Schedule Family/Medical Leave Taken form to his/her immediate supervisor during any bi-weekly pay period in which leave is taken. This form documents the date(s) and number of hours of each incident of Family/Medical Leave, as well as the total hours of leave taken in the pay period. The form should be forwarded to the appointing authority or his/her designee, who will record FML hours used on the payroll and deposit the form(s) in an appropriate departmental file. Intermittent or Reduced Schedule Leave must be requested and approved at least once annually, if requested for a duration of one year or more.

## **XII. GENERAL PROVISIONS**

- 1. Confidentiality and Record Keeping:** In order to comply with the confidentiality requirements in the "Family and Medical Leave Act for securing personal medical information," requests for FML should be submitted by the employee directly to the appointing authority, or his or her designee. **Records and documents relating to certifications, re-certifications or medical histories of employees or an employee's family member should be maintained as a confidential medical record in separate files/records from a personnel file.**
- 2. Posting Requirement:** Every employer, subject to the "Family and Medical Leave Act," is required to keep posted on the premises, in a conspicuous place, a notice explaining the Act's provisions and information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division of the Department of Labor. Posters are available from the Department of Personnel to all departments to satisfy this requirement. Appointing authorities are responsible for ensuring that the posters are placed in areas easily accessible and normally frequented by employees. In addition, an employer should provide a copy of this Administrative Regulation No. 133 to employees on request.
- 3. Discrimination/Retaliation Prohibited:** It is unlawful for an employer to interfere with, restrain, or deny the exercise of (or attempt to exercise) any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any person for opposing or complaining about any unlawful practice under the FMLA. **Given these prohibitions, an appointing authority cannot weigh an employee's use of FML as a negative factor in employment actions, including promotions, performance evaluations or discipline, etc. Nor can the use of FML result in warning letters or loss of benefits, such as the use of sick leave, medical leave, vacation or compensatory time taken during appropriate FML circumstances.**
- 4. Coordination with the Department of Personnel:** Departments should coordinate with the Department of Personnel if circumstances involving FML arise that are not addressed in this regulation and assistance is needed. Further, actions taken relative to FML must be considered, when applicable, in conjunction with other federal and state regulations, i.e., the "Americans with Disabilities Act," workers' compensation

laws, etc.

An appointing authority must coordinate any decisions to deny, delay, or terminate FML with the Department of Personnel, Employee Relations Section, prior to notifying the employee or implementing such decisions. In addition, any appointing authority notified by the Department of Labor of a pending investigation of alleged violation of the FMLA should immediately contact the Director of Personnel and the City Counselor's Office.

Questions regarding this administrative regulation or provisions of the Family and Medical Leave Act should be directed to the Employee Relations Section of the Department of Personnel, at 314-622-3563.

5. **Training Opportunities:** Training is offered periodically by the Department of Personnel on the provisions of this regulation and the Family and Medical Leave Act or it can be provided upon request. It is highly recommended that all employees who have responsibility for reviewing and approving FML requests, as well as employees with payroll responsibility, attend these sessions.

#### DEPARTMENT OF PERSONNEL

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Richard R. Frank  
Director

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